



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 220119-0030]

RIN 0648-BK10

Fisheries of the Northeastern United States; Southern Red Hake Rebuilding Plan; Framework Adjustment 62 to the Small-Mesh Multispecies Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS approves and implements Framework Adjustment 62 for Whiting, Red Hake, and Offshore Hake to the Northeast Multispecies Fishery Management Plan. This action establishes a 10-year rebuilding plan, including a rebuilding schedule and change in possession limits for the overfished southern red hake stock. This action is necessary to meet the statutory requirements for an overfished stock and rebuilding plan consistent with the Magnuson-Stevens Fishery Conservation and Management Act. This action is intended to rebuild the southern red hake stock and help achieve optimum yield in the commercial fishery.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The New England Fishery Management Council developed an environmental assessment (EA) for this action that describes and analyzes these measures and other considered alternatives. Copies of Framework Adjustment 62, including the EA and information on the economic impacts of this rulemaking, are available upon

request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: <https://www.nefmc.org/library/framework-62>.

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the internet at: <http://www.greateratlantic.fisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Policy Analyst, 978-282-8456.

SUPPLEMENTARY INFORMATION:

Background

In January 2018, the southern red hake stock was declared overfished. To meet the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements of an overfished stock, a rebuilding plan and associated management measures are necessary to prevent overfishing, ensure adequate rebuilding, and help achieve optimum yield in the fishery. The New England Fishery Management Council took final action on Framework Adjustment 62 (Framework 62) to the Northeast Multispecies Fishery Management Plan at its June 2020 meeting and submitted the action to us in mid-August 2020. NMFS published a proposed rule on July 12, 2021 (86 FR 36519), with a comment period ending on July 27, 2021.

NMFS has approved all of the measures in Framework 62 recommended by the Council, as described below. This final rule establishes a 10-year rebuilding plan, including a rebuilding schedule and change in possession limits for the overfished southern red hake stock. The Magnuson-Stevens Act allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and

other applicable law. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here.

Southern Red Hake Rebuilding Schedule

This action establishes a 10-year rebuilding schedule for southern red hake. Under this rebuilding program, catch limits will be established by reducing the acceptable biological catch (ABC) to 75 percent of the fishing mortality rate at maximum sustainable yield (F_{MSY}) for the duration of the rebuilding period, or until the stock reaches its biomass target, whichever happens first. In past years, the ABC has been set at 90 percent or higher of the F_{MSY} , consistent with the Council's Scientific and Statistical Committee recommendations.

Changes to Southern Red Hake Possession Limits

This action will also decrease the trip possession limit from 5,000 lb (2,268 kg) to a dual 1,000-lb/600-lb (453.6-kg/272.2-kg) possession limit based on the selectivity of the gear type or mesh size being used (Table 1). The 600-lb (272.2-kg) possession limit will apply to standard small-mesh trawls (less than 5.5-inch (13.97-cm) square or diamond mesh), which are less selective, while the 1,000-lb (453.6-kg) possession limit will apply to large-mesh trawls and other more selective gear types. In addition, the 1,000-lb (453.6-kg) possession limit applies to vessels when using gears other than trawls. These small-mesh selective gear types include raised-footrope trawls, large-mesh belly panel trawls, and rope separator trawls. The reduced possession limits are intended to reduce landings and catch and to incentivize fishermen to use gear and gear configurations that reduce the catch of red hake.

Table 1 List of Gears and Associated Possession Limits

Gear Used	Possession Limit
Small-mesh trawls < 5.5-in (13.97-cm) square or diamond mesh	600-lb (272.2-kg)
Large mesh trawls \geq 5.5-in (13.97-cm) square or diamond mesh and small-mesh selective gear trawls (raised-footrope trawls, large-mesh belly panel trawls, and rope separator trawls)	1,000-lb (453.6-kg)
Gear other than trawl	1,000-lb (453.6-kg)

The in-season accountability measure will remain in place, which reduces the possession limit to 400 lb (181 kg) for all vessels when the total landings reach or exceed the total allowable landings (TAL) trigger of 40.4 percent of the annual catch limit (ACL). The Regional Administrator may deem other gears as selective based on an evaluation of their ability to adequately reduce the catch of red hake and would announce such a decision through issuance of a rule in the **Federal Register** consistent with the process defined at 50 CFR 648.86(d)(1)(v)(B)(2).

Proposed Rule Comments and Responses

We received one relevant comment on the proposed rule during the public comment period. This commenter stated that all small-mesh fisheries should have restrictions on the length of wire used to deploy fishing nets as a means of catch control. The commenter also noted that excessive amounts of wire used on gear in the southern red hake fishery are contributing to the higher catches, whereas in the northern red hake fishery, vessels are required to use the raised-footrope trawl which has restrictions on wire length. The requirement to use a raised-footrope trawl was implemented in the northern fishery as a means to reduce bycatch of other regulated species under the Northeast Multispecies FMP. Currently for southern red hake there are no gear restrictions in place restricting the length of wire that is allowed because the same concern does not exist. This action implements a higher reduced possession limit for fishermen that use more selective gear types such as the raised-footrope trawl when fishing for southern red hake, which is intended to incentivize the use of more selective gear. The Council could consider additional gear restrictions for the fishery and FMP in a future action, if it chooses, and if additional conservation and management measures are necessary.

Changes from the Proposed Rule

This final rule contains one clarifying change in addition to what was contained in the proposed rule. Under section 305(d) of the Magnuson-Stevens Act, we are also making one clarifying change to a provision in the regulations on the Raised Footrope Trawl Whiting Fishery Exemption Area to ensure that the language of that provision is consistent with Framework Adjustment 35 to the Northeast Multispecies FMP (see November 19, 2002, final rule (67 FR 69694) modifying the regulations implementing Framework Adjustment 35 at 50 CFR § 648.80). In preparing this final rule, we noticed that this provision in the regulations, as currently drafted, could be confusing as to the timeframe when the eastern portion of the exemption area opens for fishing. Currently, § 648.80(a)(15)(i)(F) states that “Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.” This final rule adds the words “continue to” after “except that it may”, and replaces “from November 21”, with the phrase “, which remains open”. This change clarifies that the eastern portion opens on September 1, when the entire exemption area opens, and remains open through December 31. This clarifying correction does not change any management measures associated with this Exemption Area; it only clarifies the dates that fishing would be open in the exemption area, consistent with the intent of Framework Adjustment 35, as described in previous rulemaking actions (see the final rule at 67 FR 69694; November 19, 2002). Because the public had opportunity to comment on these management measures during the rulemaking process for Framework Adjustment 35, and because we are making only a minor, clarifying correction to the existing regulations, additional public comment is not necessary.

Classification

NMFS is issuing this rule pursuant to Section 304(b)(1)(A) of the Magnuson-Stevens Act, which provides specific authority and procedure for implementing this action. NMFS is also issuing clarify regulatory text to a previously implemented Framework Adjustment pursuant to section 305(d). The NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not contain policies with federalism or “takings” implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action does not contain any collection-of-information requirements subject to the Paperwork Reduction Act.

The Assistant Administrator for Fisheries has determined that there is good cause to waive the 30-day delay in the date of effectiveness in accordance with 5 U.S.C. 553(d)(3) of the Administrative Procedure Act. This action must be in place prior to a separate action to implement the 2021-2023 small-mesh multispecies specifications (see the proposed rule at 86 FR 31262; June 11, 2021), which would increase the ACL for southern red hake. The 2021 fishing year began on May 1, 2021, and the small-mesh multispecies fishery is operating under default specifications. In the separate action, the Council recommends an 89 percent increase in the 2021 catch limits for southern red hake based on data seen in the NMFS trawl surveys; the Council recommended implementing this increase in the catch limit as soon as possible, basing its recommendation on the most recent stock assessment data that the Council also used in developing the rebuilding plan implemented by this final rule. A 30-day delay in the date of effectiveness would postpone the implementation of this final rule, and, hence the implementation of the final 2021 specifications that rely on this action, and would be

contrary to the public interest. The delay could create confusion and potential economic harm to the small-mesh multispecies fishery due to lost opportunity under the current, lower catch limit, and due to the potential triggering of unnecessary accountability measures for southern red hake early in the year under the current, lower catch limits. In addition a 30-day delay in the date of effectiveness would not benefit the regulated parties, as no additional time is required to come into compliance with this final rule. Complying with this final rule simply means adhering to the new possession limits and management measures set in this action. Fishery stakeholders have also been involved in the development of this action, and are anticipating the issuance of this rule. For all of these reasons, NMFS finds that the need to implement these measures in a timely manner constitute good cause to waive the 30-day delay in this final rule's date of effectiveness.

For similar reasons, and to avoid confusion, NMFS finds good cause to waive the 30-day delay in the date of effectiveness with respect to this final rule's change from the proposed rule, as described above in the **Changes from the Proposed Rule** section, because the change simply clarifies a potentially confusing regulatory provision and does not amend any management measures.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 19, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.80, revise paragraph (a)(15)(i)(F) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(15) * * *

(i) * * *

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may continue to occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area, which remains open through December 31 of each fishing year.

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3. In § 648.86, add paragraph (d)(1)(v) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(1) * * *

(v) *Possession of southern red hake while under a rebuilding plan.* When the southern red hake stock, defined as statistical areas 525-526, 533-534, 541-543, 537-539, 562, 611-616, 621-623, 625-628, 631-634, 635-638, is under a rebuilding plan, the year-round possession limit for southern red hake shall be the following:

(A) *Vessels possessing on board or using nets of mesh size smaller than 5.5 in (13.97 cm).* Owners and operators of vessels may possess and land no more than 600 lb (272 kg) of southern red hake per trip when:

(1) Using trawls with diamond or square mesh size less than 5.5 in (13.97 cm); and/or

(2) A vessel is in possession of a net with mesh size smaller than 5.5 in (13.97 cm), unless it is properly stowed and not available for immediate use in accordance with § 648.2 and not used on that trip.

(B) *Vessels using nets of mesh size greater than or equal to 5.5 in (13.97 cm), using small-mesh selective trawls, or gear other than trawl.* Owners and operators may possess and land no more than 1,000 lb (453 kg) of southern red hake per trip when:

(1) Using trawls with diamond or square mesh size 5.5 in (13.97 cm) or larger;

(2) Using small-mesh selective gear, including raised-footrope trawls as defined in § 648.80(a)(9)(ii), large-mesh belly panel trawls as defined in § 648.84(f), rope separator trawls as defined in § 648.84(e), and other selective gears deemed by the Regional Administrator to adequately reduce the catch of red hake; or

(3) When using gears other than trawls.

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4. In § 648.90, revise paragraphs (b)(2) introductory text and (b)(2)(i) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

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(b) * * *

(2) *Process for specifying ABCs, ACLs, and TALs.* The Whiting PDT shall calculate the OFL and ABC values for each small-mesh multispecies stock based on the control rules established in the FMP. These calculations shall be reviewed by the SSC and guided by terms of reference developed by the Council. The ACLs and TALs shall be calculated based on the SSC's approved ABCs, as specified in paragraphs (a)(2)(i)(A) through (C) and (a)(2)(ii)(A) through (C) of this section.

(i) *Red hake— (A) ABCs.* (1) The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of red hake. The red hake ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFL.

(2) While the southern red hake stock is under a rebuilding plan, the ABC for that stock shall be set to 75-percent of the OFL for the duration of the rebuilding period or until the stock reaches its biomass target, whichever occurs first.

(B) *ACLs.* The red hake ACLs are equal to 95 percent of the corresponding ABCs.

(C) *TALs.* (1) The red hake TALs are equal to the northern red hake and southern red hake ACLs minus a discard estimate based on the most recent 3 years of data and then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(2) If more than two-thirds of the southern red hake TAL is harvested in a single year, the Regional Administrator shall consult with the Council and will consider implementing quarterly TALs in the following fishing year, as prescribed in the FMP and in a manner consistent with the requirements of the Administrative Procedure Act.

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